

General Land Office

ID# 11743  
SG

Jack Giberson  
Chief Clerk

Gary Mann  
Commissioner

RQ-60

February 21, 1991

Ms. Sarah Woelk  
Chief, Letter Opinion Section  
Attorney General's Office  
P. O. Box 12548  
Austin, Texas 78711-2548

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**FEB 22 91**

**Opinion Committee**

Dear Ms. Woelk:

Pursuant to your conversations with General Land Office staff, this is a discussion of the authority permitting the Matagorda County Navigation District No. 1 to participate in a project involving construction of an aquaculture facility. The proposed facility, called the Texas Coastal Aquaculture Facility, will be a cooperative venture between the General Land Office, Texas A & M University, and the Matagorda County Navigation District No. 1. The objective of the program is to develop, refine and disseminate aquaculture technology for fresh and salt-water species to Texas entrepreneurs.

The Matagorda County Navigation District No. 1 (MCND#1) is proposing to commit \$1 million to the project. The funds will be applied towards the purchase of the land and for construction of improvements on the land. MCND#1 will purchase 30 of the requisite 83 acres for the facility. The majority of the buildings, including the headquarters, will be constructed on those 30 acres funded by the \$1,000,000.00 put in by the district and matching federal funds. A series of experimental ponds for cultivating aquaculture stock will be constructed on the remaining acreage purchased by the General Land Office. (See attached diagram). The GLO and MCND#1 will lease the completed aquaculture facility to Texas A & M as lessee and operator of the facility. All operational funding will be appropriated to Texas A & M by the legislature directly.

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MCND#1 was created pursuant to Article XVI, Section 59 of the Texas Constitution. The District is governed by Chapters 60 and 62 of the Texas Water Code.

Chapter 62.101 sets out the purposes for which a district may be created. They are:

To provide, in or adjacent to its boundaries, for:

- 1) the improvement, preservation, and conservation of inland coastal water for navigation;
- 2) the control and distribution of storm water and floodwater of rivers and streams in aid of navigation; and
- 3) any other purposes necessary or incidental to the navigation of inland and coastal water or in aid of these purposes, as stated in Article XVI, Section 59 of the Texas Constitution. (Emphasis added.)

Section 60.101, Tex. Water Code, (Acquisition and Maintenance of Port Facilities) reads as follows:

(a) Any district may acquire land or interests in land by purchase, lease, or otherwise, may convey the land or interest in the land by lease, installment sale, or otherwise, and may purchase, construct, enlarge, extend, repair, maintain, operate, develop, sell by installment sale, or otherwise, and lease as lessor or as lessee:

(1-6) wharves and docks, etc.

(7) all other facilities or aids incidental to or useful in the operation or development of the district's ports and waterways or in aid of navigation or navigation-related commerce in the ports and on the waterways. (Emphasis added).

The power granted by 60.101 is expanded by section 62.107, Tex. Water Code. This section enables a district created under this chapter to acquire by purchase, land adjacent to or accessible to the navigable water and ports developed by the district which may aid the development of industries on the land. It also enables the

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district to lease the facility in aid of navigation-related commerce in the port. Tex. Water Code Ann. §62.107(a)(b).

Both of these sections are ample authority for the participation of MCND#1 in the aquaculture facility as an economic development project to foster commerce and industry in and near the port. This increases the district's tax base and generates imports and exports of fish and fish products, as well as fish food supplements, through the district's ports and shipping facilities. The statutes clearly allow the district to buy land, construct improvements on it, and lease it to further these purposes.

The issue of whether the MCND#1 could expend money for these purposes without violating the constitutional prohibition against using public moneys for private uses was also raised. A 1987 constitutional amendment resolves constitutional questions concerning the use of public moneys for development and diversification of the economy of the state. Tex. Const. art. III, §52-a.

Furthermore, Chapter 62 of the Water Code also provides that the acquisition, operation and development of land in aid of the development of industrial ports and waterways is a public purpose and a matter of public necessity. Tex. Water Code Ann., §62.107(c). It has even been held by an appellate court in 1954 that acquisition of land for the purpose of leasing the same to private entities as an industrial site in the proximity of a port is reasonably necessary to the successful operation of the port and is a "public use." Atwood v. Willacy County Navigation District 271 S.W.2d 137, 142-143 (Tex. Civ. App.--San Antonio 1954, writ ref'd n.r.e.), appeal dismissed 350 US 84. The parties to the center are all public entities: Matagorda County, Matagorda County Navigation District, The Texas General Land Office and Texas A & M University. The research and technology developed at the facility will be available to anyone who wants it. This facility will not be leased to a private entity. Rather, a state university will operate it as an applied research center, which will help economic development of aquaculture in the region served by the navigation district. There is no doubt, moneys expended on this project will be for a public purpose.


Based upon the above analysis, we respectfully urge that the Matagorda County Navigation District No. 1 is statutorily and

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constitutionally permitted to use district funds for the acquisition and development of the Texas Aquaculture Facility.

Sincerely,

GENERAL LAND OFFICE

  
Jack Giberson  
Chief Clerk and  
First Deputy Commissioner

JG/MER/cc

# TEXAS COASTAL AQUACULTURE FACILITY

